



2011 SENATE BILL 417

1 **AN ACT** *to amend* 108.09 (2) (b), 108.09 (3) (a) 1., 108.09 (3) (a) 2., 108.09 (3) (b),
2 108.09 (8) (b), 108.22 (1) (a), 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225
3 (17) and 108.24 (1); and *to create* 108.04 (2) (ae), 108.04 (11) (bh), 108.16 (6)
4 (n) and 108.22 (8) (bh) of the statutes; **relating to:** concealment of benefit claim
5 information, availability for work, interest on delinquent payments, and the
6 composition and authority of appeal tribunals under the unemployment
7 insurance law.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 **SECTION 1.** 108.04 (2) (ae) of the statutes is created to read:
9 108.04 **(2)** (ae) A claimant is not available for work under par. (a) 1. in any week
10 in which he or she is located in a country other than the United States, as defined

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1 in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has
2 authorization to work in that other country and there is a reciprocal agreement
3 concerning the payment of unemployment insurance benefits between that other
4 country and the United States.

5 **SECTION 2.** 108.04 (11) (bh) of the statutes is created to read:

6 108.04 (11) (bh) In addition to the penalty for benefits resulting from
7 concealment as provided in par. (be), the department shall assess a penalty against
8 the claimant in an amount equal to 15 percent of the benefit payments erroneously
9 paid to the claimant as a result of one or more acts of concealment described in pars.
10 (a) and (b).

11 **SECTION 3.** 108.09 (2) (b) of the statutes is amended to read:

12 108.09 (2) (b) The department shall issue determinations whenever necessary
13 to resolve any matters ~~which~~ that may bar, suspend, terminate or otherwise affect
14 the employee's eligibility for benefits or to resolve any liability for penalties under
15 s. 108.04 (11) (bh).

16 **SECTION 4.** 108.09 (3) (a) 1. of the statutes is amended to read:

17 108.09 (3) (a) 1. To hear and decide disputed claims or to resolve liabilities
18 under sub. (2) (b), the department shall establish appeal tribunals. Except as
19 authorized in this paragraph, each tribunal shall consist of an individual who is a
20 permanent employee of the department.

21 **SECTION 5.** 108.09 (3) (a) 2. of the statutes is amended to read:

22 108.09 (3) (a) 2. The department may appoint an individual who is not a
23 permanent employee of the department to serve as a temporary reserve appeal
24 tribunal ~~if the individual formerly served as an appeal tribunal while employed by~~
25 ~~the department and retired from state service as a permanent employee.~~ An

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1 individual who is appointed to serve as a temporary reserve appeal tribunal shall be
2 an attorney who is licensed to practice in this state.

3 **SECTION 6.** 108.09 (3) (b) of the statutes is amended to read:

4 108.09 (3) (b) The Consistently with applicable state and federal law, the
5 appeal tribunal may affirm, reverse or modify the initial determination of the
6 department or set aside the determination and remand the matter to the department
7 for further proceedings, or may remand to the department for consideration of any
8 issue not previously investigated by the department.

9 **SECTION 7.** 108.09 (8) (b) of the statutes is amended to read:

10 108.09 (8) (b) Any party in a dispute concerning benefit eligibility or liability
11 for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any
12 administrative proceeding under this chapter concerning such a dispute, may be
13 represented by counsel or another agent; but no such counsel or agent may together
14 charge or receive from an employee for all such representation in connection with
15 such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits
16 at issue unless the department has first approved a specified higher fee. This
17 paragraph does not apply to any fee charged for representation before a court of law.

18 **SECTION 8.** 108.16 (6) (n) of the statutes is created to read:

19 108.16 (6) (n) Any penalty collected under s. 108.04 (11) (bh).

20 **SECTION 9.** 108.22 (1) (a) of the statutes is amended to read:

21 108.22 (1) (a) If any employer, other than an employer which has ceased
22 business and has not paid or incurred a liability to pay wages in any quarter
23 following the cessation of business, is delinquent in making by the assigned due date
24 any payment to the department required of it under this chapter, the employer shall
25 pay interest on the delinquent payment at ~~the rate of one percent per~~ that monthly

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1 rate that annualized is equal to 9 percent or to 2 percent more than the prime rate
2 as published in the Wall Street Journal as of September 30 of the preceding year,
3 whichever is greater, for each month or fraction thereof that the employer is
4 delinquent from the date such payment became due. If any such employer is
5 delinquent in making any quarterly report under s. 108.205 (1) by the assigned due
6 date, the employer shall pay a tardy filing fee of \$50 for each delinquent quarterly
7 report.

8 **SECTION 10.** 108.22 (8) (bh) of the statutes is created to read:

9 108.22 **(8)** (bh) To recover any penalty under s. 108.04 (11) (bh), the department
10 may recoup the amount of the penalty by filing a warrant against a liable individual
11 in the same manner as is provided in this section for collecting delinquent payments
12 from employers.

13 **SECTION 11.** 108.225 (1) (b) of the statutes is amended to read:

14 108.225 **(1)** (b) “Debt” means a delinquent contribution or repayment of a
15 benefit overpayment, an assessment under s. 108.04 (11) (cm) a liability incurred
16 under s. 108.04 (11) (bh), or any liability of a 3rd party for failure to surrender to the
17 department property or rights to property subject to levy after proceedings under
18 sub. (4) (b) and s. 108.10 to determine that liability.

19 **SECTION 12.** 108.225 (16) (am) 1. (intro.) of the statutes is amended to read:

20 108.225 **(16)** (am) 1. (intro.) In the case of benefit overpayments or a penalty
21 imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption
22 from levy of 80% of the debtor’s disposable earnings, except that:

23 **SECTION 13.** 108.225 (17) of the statutes is amended to read:

24 108.225 **(17)** EXEMPTIONS. The first \$1,000 of an account in a depository
25 institution is exempt from any levy to recover a benefit overpayment or penalty

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1 imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as
2 provided in sub. (16).

3 **SECTION 14.** 108.24 (1) of the statutes is amended to read:

4 108.24 (1) Any person who knowingly makes a false statement or
5 representation to obtain any benefit payment under this chapter, either for himself
6 or herself or for any other person, shall be fined not less than \$100 nor more than
7 \$500 or imprisoned not more than 90 days, or both; and each such false statement
8 or representation constitutes a separate offense. This penalty is in addition to any
9 penalty imposed under s. 108.04 (11) (bh).

10 **SECTION 15. Initial applicability.**

11 (1) The treatment of sections 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1., and (8)
12 (b), 108.22 (8) (bh), 108.225 (1) (b), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the
13 statutes first applies with respect to overpayments established by the department
14 of workforce development after the effective date of this subsection.

15 (1g) The treatment of sections 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1., and (8)
16 (b), 108.22 (8) (bh), 108.225 (1) (b), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the
17 statutes first applies with respect to weeks of unemployment beginning with the first
18 Sunday that follows the 180th day beginning after the effective date of this
19 subsection.

20 (1r) The treatment of section 108.16 (6) (n) of the statutes first applies with
21 respect to overpayments established by the department of workforce development
22 after October 21, 2013.

23 (2) The treatment of section 108.04 (2) (ae) of the statutes first applies with
24 respect to weeks of unemployment beginning on the effective date of this subsection.

